IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4038 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M A SHAH

Versus

BHAVSING DAHYABHAI RATHOD

Appearance:

1. Special Civil Application No. 4038 of 1990
MS SEJAL K MANDAVIA for Petitioner No. 1
MR VS SHAH for Respondent No. 1
MR KARTIKEY P RAWAL for Respondent No. 2
SERVED BY RPAD - (R) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 22/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Petitioner-Shri M.A.Shah, Superintendent of Customs (P), Ahmedabad has filed this petition under Art. 226 and 227 of the Constitution and prayed that writ of certiorari or any other writ order be issued and the Civil Suit No.64/90 filed by the respondent-Bhavsinh Dahyabhai Rathod along with injunction application filed in the court of Civil Judge (S.D.), Ahmedabad (rural) and the show cause notice issued in it be quashed and set aside. The petitioner also prayed for declaration that the institution of the civil suit before the civil court at the instance of the respondent was wholly untenable in view of the provisions of Section 69 of the Narcotic Drugs & Psychotropic Substance Act, 1985 (for short "NDPS Act").

From the averments made in this petition, it appears that prior to filing of the suit the respondent had made futile attempts to get anticipatory bail in connection with the offences alleged to have been committed by him under the provisions of NDPS Act. Failing in his attempts to get anticipatory bail from the competent criminal court, he found out the device and approached the Civil Court (S.D.), Ahmedabad (Rural) by way of Civil Suit No.64/90 along with injunction application praying that he may not be arrested till the final disposal of the civil suit. It is really surprising that the learned Civil Judge (S.D.), Ahmedabad (Rural) without applying his mind to the facts of the case as to whether such suit is maintainable or not, issued show cause notice on the injunction application and called upon the present petitioner to show cause as to why relief prayed for in the injunction application should not be granted. Filing detailed reply dated 17.2.1990 to the injunction application, the petitioner moved this court by way of writ petition and prayed for dismissal of the civil suit filed by the respondent before the civil court.

On 31.5.1990 Division Bench of this court straightaway admitted the petition and granted ad-interim relief in terms of para 17(D) whereby the execution and implementation of the show cause notice issued by the civil court on injunction application filed in civil suit came to be stayed, which is continued till today.

Order sheet of this petition shows that this

petition is listed for 5th time for final hearing and on every occasion, learned counsel for the respondent did not remain present, as stated at the Bar by Ms.Mandavia. Today, also learned counsel for the respondent was not present. Under the circumstances, the matter is heard and disposed of after hearing Ms.Mandavia, learned counsel for the petitioner and learned Counsel, Mr.Kartikey Raval for the respondent No.2-Union of India.

At the outset, it may be stated that Ms.Mandavia, learned counsel for the petitioner made a statement at the Bar on instruction from the petitioner that the respondent-Bhavsinh Dahyabhai Rathod has already been arrested in connection with offence under section NDPS Act and at present he is in jail. In that view of the matter, we are not required to go into the merits of the matter and decide this petition as with the arrest of the respondent, his suit and injunction application both have become infructuous. Once suit and injunction application do not survive, then obviously petition filed against the order of issuance of notice on injunction application filed in the civil suit would also obviously not survive. Accordingly, this petition is disposed of. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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